

CLAUSE I-95 – PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR SUBCONTRACTS (August 2002)

SURA shall pay the Subcontractor as follows upon the submission of invoices or vouchers approved by the Subcontracting Officer:

(a) Hourly rate.

- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Subcontracting Officer), to the Subcontracting Officer or designee. The Subcontractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Subcontracting Officer. Promptly after receipt of each substantiated voucher, SURA shall, except as otherwise provided in this subcontract, and subject to the terms of (e) below, pay the voucher as approved by the Subcontracting Officer.
- (2) Unless otherwise prescribed in the Schedule, the Subcontracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Subcontractor as provided in paragraph (f) below.
- (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Subcontractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Subcontracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this subcontract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Subcontracting Officer.

(b) Materials and subcontracts.

- (1) Allowable costs of direct materials shall be determined by the Subcontracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this subcontract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Subcontractor's usual accounting practices consistent with Subpart 31.2 of the FAR. The Subcontractor shall be reimbursed for items and services purchased directly for the subcontract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this clause, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.
- (2) The cost of subcontracts that are authorized under the subcontracts clause of this subcontract shall be reimbursable costs under this clause; provided, that the costs are consistent with subparagraph(3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the Subcontractor in the same manner as for items and services purchased directly for the subcontract under subparagraph (1) above; however, this requirement shall not apply to a subcontractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (a)(1) above.
- (3) To the extent able, the Subcontractor shall –
 - (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Subcontractor shall promptly notify the Subcontracting Officer and give the reasons. Credit shall be given to SURA for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Subcontractor, or would have accrued except for the fault or neglect of the Subcontractor. The benefits lost without fault or neglect on the part of the Subcontractor, or lost through fault of SURA, shall not be deducted from gross costs.

- (c) Total cost. It is estimated that the total cost to SURA for the performance of this subcontract shall not exceed the ceiling price set forth in the Schedule and the Subcontractor agrees to use its best efforts to perform the work

specified in the Schedule and all obligations under this subcontract within such ceiling price. If at any time the Subcontractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this subcontract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Subcontractor shall notify the Subcontracting Officer giving a revised estimate of the total price to SURA for performing this subcontract with supporting reasons and documentation. If at any time during performing this subcontract, the Subcontractor has reason to believe that the total price to SURA for performing this subcontract will be substantially greater or less than the then stated ceiling price, the Subcontractor shall so notify the Subcontracting Officer, giving a revised estimate of the total price for performing this subcontract, with supporting reasons and documentation. If at any time during performing this subcontract, SURA has reason to believe that the work to be required in performing this subcontract will be substantially greater or less than the stated ceiling price, the Subcontracting Officer will so advise the Subcontractor, giving the then revised estimate of the total amount of effort to be required under the subcontract.

- (d) Ceiling price. SURA shall not be obligated to pay the Subcontractor any amount in excess of the ceiling price in the Schedule, and the Subcontractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Subcontracting Officer shall have notified the Subcontractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this subcontract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Subcontractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (e) Audit. At any time before final payment under this subcontract the Subcontracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Subcontracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Subcontractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Subcontractor with all terms of this subcontract (including, without limitation, terms relating to patents and the terms of (f) and (g) below), SURA shall promptly pay any balance due the Subcontractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Subcontractor as promptly as practicable following completion of the work under this subcontract, but in no event later than 1 year (or such longer period as the Subcontracting Officer may approve in writing) from the date of completion.
- (f) Assignment. The Subcontractor, and each assignee under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this subcontract, a release discharging SURA, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this subcontract, subject only to the following exceptions:
 - (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Subcontractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Subcontractor to third parties arising out of performing this subcontract, that are not known to the Subcontractor on the date of the execution of the release, and of which the Subcontractor gives notice in writing to the Subcontracting Officer not more than 6 years after the date of the release or the date of any notice to the Subcontractor that SURA is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the Subcontractor by reason of its indemnification of SURA against patent liability), including reasonable incidental expenses, incurred by the Subcontractor under the terms of this subcontract relating to patents.
- (g) Refunds. The Subcontractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Subcontractor or any assignee, that arise under the materials portion of this subcontract and for which the Subcontractor has received reimbursement, shall be paid by the Subcontractor to SURA. The Subcontractor and each assignee, under an assignment entered into under this subcontract and in effect at the time of final payment under this subcontract, shall execute and deliver, at the time of and as a condition precedent to final payment under this subcontract, an assignment to SURA of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Subcontracting Officer.

Alternate I - If the nature of the work to be performed requires the Subcontractor to furnish material that is regularly sold to the general public in the normal course of business by the Subcontractor, and the price is under the limitations prescribed in 16.601(b)(3), add the following subparagraph (4) to paragraph (b) of the basic clause:

- (4) If the nature of the work to be performed requires the Subcontractor to furnish material which is regularly sold to the general public in the normal course of business by the Subcontractor, the price to be paid for such material, notwithstanding (b)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to SURA; provided, that in no event shall such price be in excess of the Subcontractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

Alternate II - If a labor-hour subcontract is contemplated, and if no specific reimbursement for materials furnished is intended, the Subcontracting Officer may add the following paragraph (h) to the basic clause:

The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

(h) Interim payments.

Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

The designated payment office will make interim payments for contract financing on the 30th [*Subcontracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"*] day after the designated billing office receives a proper payment request. In the event that SURA or the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.